

HOUSE BILL NO. 54

INTRODUCED BY Z. BROWN

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WATER RIGHT ABANDONMENT LAWS TO ADDRESS NONUSE DURING PERIODS OF DROUGHT; PROVIDING THAT NONUSE OF A WATER RIGHT DURING PERIODS OF DROUGHT DOES NOT BY ITSELF CONSTITUTE AN INTENT TO ABANDON THE WATER RIGHT; AND AMENDING SECTION 85-2-404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 85-2-404, MCA, is amended to read:

**"85-2-404. Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) If an appropriator ceases to use all or part of an appropriation right during a drought designation

1 pursuant to the drought plan adopted under 2-15-3308 and in compliance with a local, regional, or state drought  
2 plan, the reduction in use of the appropriation right does not by itself represent an intent by the appropriator to  
3 wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the  
4 appropriation right.

5 ~~(4)~~(5) The lease of an existing right pursuant to 85-2-436 or a temporary change in appropriation right  
6 pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used  
7 to establish an abandonment of any part of the right.

8 ~~(5)~~(6) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in  
9 accordance with part 2 of this chapter."

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